

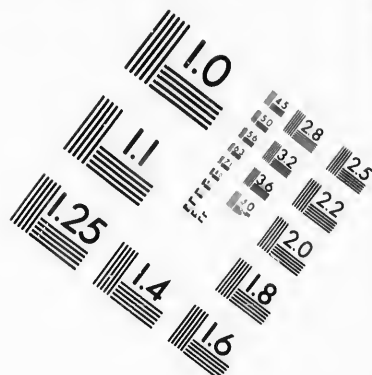
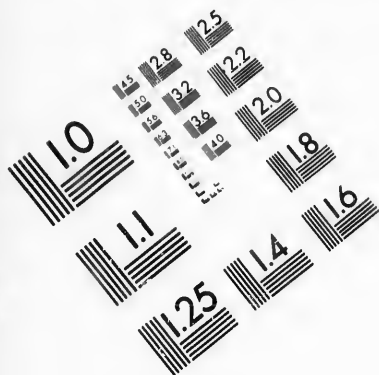
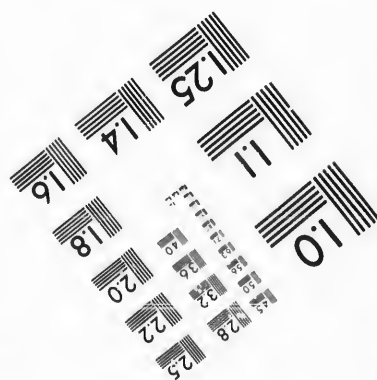
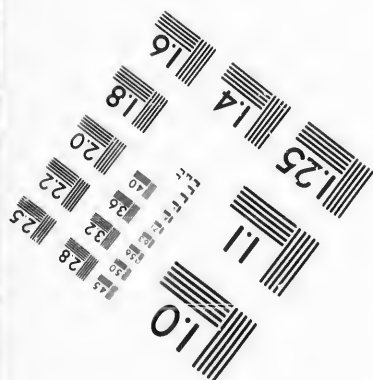
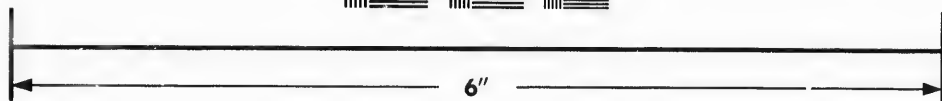
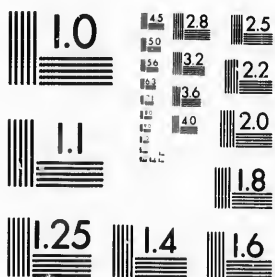


IMAGE EVALUATION TEST TARGET (MT-3)



Photographic
Sciences
Corporation

23 WEST MAIN STREET
WEBSTER, N.Y. 14580
(716) 872-4503

**CIHM/ICMH
Microfiche
Series.**

**CIHM/ICMH
Collection de
microfiches.**



Canadian Institute for Historical Microreproductions / Institut canadien de microreproductions historiques

© 1987

Technical and Bibliographic Notes/Notes techniques et bibliographiques

The Institute has attempted to obtain the best original copy available for filming. Features of this copy which may be bibliographically unique, which may alter any of the images in the reproduction, or which may significantly change the usual method of filming, are checked below.

L'Institut a microfilmé le meilleur exemplaire qu'il lui a été possible de se procurer. Les détails de cet exemplaire qui sont peut-être uniques du point de vue bibliographique, qui peuvent modifier une image reproduite, ou qui peuvent exiger une modification dans la méthode normale de filmage sont indiqués ci-dessous.

- ☐ Coloured covers/
Couverture de couleur
- ☐ Covers damaged/
Couverture endommagée
- ☐ Covers restored and/or laminated/
Couverture restaurée et/ou pelliculée
- ☐ Cover title missing/
Le titre de couverture manque
- ☐ Coloured maps/
Cartes géographiques en couleur
- ☐ Coloured ink (i.e. other than blue or black)/
Encre de couleur (i.e. autre que bleue ou noire)
- ☐ Coloured plates and/or illustrations/
Planches et/ou illustrations en couleur
- ☐ Bound with other material/
Relié avec d'autres documents
- ☐ Tight binding may cause shadows or distortion along interior margin/
La reliure serrée peut causer de l'ombre ou de la distorsion le long de la marge intérieure
- ☐ Blank: leaves added during restoration may appear within the text. Whenever possible, these have been omitted from filming/
Il se peut que certaines pages blanches ajoutées lors d'une restauration apparaissent dans le texte, mais, lorsque cela était possible, ces pages n'ont pas été filmées.
- ☒ Additional comments: /
Commentaires supplémentaires: Irregular pagination : [i] - ii, [1] - 4, 9 - 40 p.

- ☐ Coloured pages/
Pages de couleur
- ☐ Pages damaged/
Pages endommagées
- ☐ Pages restored and/or laminated/
Pages restaurées et/ou pelliculées
- ☒ Pages discoloured, stained or foxed/
Pages décolorées, tachetées ou piquées
- ☐ Pages detached/
Pages détachées
- ☒ Showthrough/
Transparence
- ☐ Quality of print varies/
Qualité inégale de l'impression
- ☐ Includes supplementary material/
Comprend du matériel supplémentaire
- ☐ Only edition available/
Seule édition disponible
- ☐ Pages wholly or partially obscured by errata slips, tissues, etc., have been refilmed to ensure the best possible image/
Les pages totalement ou partiellement obscurcies par un feuillet d'errata, une pelure, etc., ont été filmées à nouveau de façon à obtenir la meilleure image possible.

This item is filmed at the reduction ratio checked below/
Ce document est filmé au taux de réduction indiqué ci-dessous.

10X	12X	14X	16X	18X	20X	22X	24X	26X	28X	30X	32X
					✓						

The copy filmed here has been reproduced thanks to the generosity of:

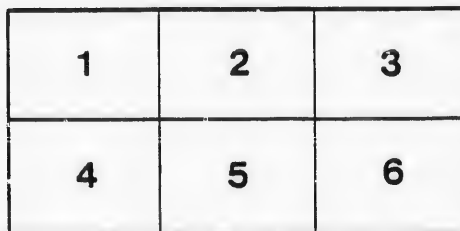
Harold Campbell Vaughan Memorial Library
Acadia University.

The images appearing here are the best quality possible considering the condition and legibility of the original copy and in keeping with the filming contract specifications.

Original copies in printed paper covers are filmed beginning with the front cover and ending on the last page with a printed or illustrated impression, or the back cover when appropriate. All other original copies are filmed beginning on the first page with a printed or illustrated impression, and ending on the last page with a printed or illustrated impression.

The last recorded frame on each microfiche shall contain the symbol ➡ (meaning "CONTINUED"), or the symbol ▼ (meaning "END"), whichever applies.

Maps, plates, charts, etc., may be filmed at different reduction ratios. Those too large to be entirely included in one exposure are filmed beginning in the upper left hand corner, left to right and top to bottom, as many frames as required. The following diagrams illustrate the method:



L'exemplaire filmé fut reproduit grâce à la générosité de:

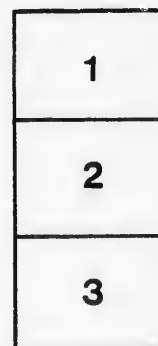
Harold Campbell Vaughan Memorial Library
Acadia University.

Les images suivantes ont été reproduites avec le plus grand soin, compte tenu de la condition et de la netteté de l'exemplaire filmé, et en conformité avec les conditions du contrat de filmage.

Les exemplaires originaux dont la couverture en papier est imprimée sont filmés en commençant par le premier plat et en terminant soit par la dernière page qui comporte une empreinte d'impression ou d'illustration, soit par le second plat, selon le cas. Tous les autres exemplaires originaux sont filmés en commençant par la première page qui comporte une empreinte d'impression ou d'illustration et en terminant par la dernière page qui comporte une telle empreinte.

Un des symboles suivants apparaîtra sur la dernière image de chaque microfiche, selon le cas: le symbole ➡ signifie "A SUIVRE", le symbole ▼ signifie "FIN".

Les cartes, planches, tableaux, etc., peuvent être filmés à des taux de réduction différents. Lorsque le document est trop grand pour être reproduit en un seul cliché, il est filmé à partir de l'angle supérieur gauche, de gauche à droite, et de haut en bas, en prenant le nombre d'images nécessaire. Les diagrammes suivants illustrent la méthode.



364

GE

A spe

P

CO

V

364

A
343.71
814 B66

THE
T R I A L S
OF
GEORGE FREDERICK BOUTELIER
AND
JOHN BOUTELIER,
FOR THE
M U R D E R
OF
FREDERICK EMINAUD,

BEFORE
A special Court of Oyer and Terminer and general Goal Delivery,

HELD AT
L U N E N B U R G,

IN AND FOR THE
COUNTY OF LUNENBURG,

IN THE
P R O V I N C E OF N O V A - S C O T I A,

AT THE
C O U R T - H O U S E I N T H E T O W N O F L U N E N B U R G,

ON
Wednesday the 4th of May, 1791.

By **JAMES STEWART, Esquire,**
OF COUNCIL FOR THE PROSECUTION.

HALIFAX:
PRINTED BY JOHN HOWE, IN BARRINGTON-STREET.
M.DCC.XCI.

A-103
FIC3E
•L386

T
ever
in la
fello
of m
recit
barb
neve
abho
carri
enor
black
nifh
abho

W
the c
when
some
incle
parts
pres
when
whof
frien
shak
tant
ment

T
of t
this
and

INTRODUCTION.

THE following Trial has for its object the discovery of a crime the most atrocious, of the kind, that ever the depravity of human nature could justify one man in laying to the charge of another. The killing of a fellow-creature, though unaccompanied by circumstances of malice or cruelty, always shocks the mind, even upon recital, and, when accompanied with fore-thought and barbarity, and characterized by the name of MURDER, never fails to raise in us the feelings of indignation and abhorrence.—But in the present instance our emotions are carried still farther;—we are not only struck with the enormity of the crime itself, but view it attended by so black a train of concurrent aggravating guilt, that astonishment and terror are superadded to indignation and abhorrence.

When we reflect upon the deliberate malice with which the deed has been meditated, planned and perpetrated; when we consider that it had been the determination of some months standing, and that a week's journey, at an inclement season of the year, through the most desert parts of the country, had been undertaken for the express purpose of executing the abominable scheme, and when we view the obstinate malignity of the perpetrators, whose flinty hearts neither the kind reception nor cordial friendship of the deceased and his family could soften or shake from their diabolical purpose, with all the concomitant circumstances of their guilt, we pause with amazement at the act!

To offer any further comment upon the atrociousness of the crime is unnecessary. The unhappy objects of this Trial have suffered the last punishment of the law, and by a voluntary confession of their guilt and by every
proof

proof of contrition have afforded all the satisfaction in their power to the justice of their country. For this satisfaction we are indebted not more to the perseverance and ability of the reverend Gentleman who so humanely and assiduously attended the wretched sufferers subsequent to their sentence, than to the pious and judicious exertions of our worthy Chief Magistrate, whose conduct, on this occasion, prepared the way for the sacred ministration, and fully manifested, what it has spoken on all others, a determined adherence to justice, conjoined with sentiments of the tenderest regard to the rights, liberties and happiness of his fellow-subjects.

TH
On
De
bu
ne
17
Ch
Ce
bo
Ca
sp
Fr
M

O
Cour
been
Gran

E
Ja
Jo
R
Ja
A
C
T
C
A

and
liver

Y
ture
occa
state

THE WHOLE PROCEEDINGS

On the special Commission of Oyer and Terminer and Gual Delivery, held at Lunenburg, in the County of Lunenburg, in the Province of Nova-Scotia, on Tuesday, Wednesday, and Thursday, the 3d, 4th, and 5th Days of May, 1791, before the Honorable THOMAS ANDREW STRANGE, Chief-Justice, and Mr. Justice BRENTON, with JOHN CREIGHTON and CHRISTOPHER DETLIF JESSEN, Esq's, both Justices of the Peace, and Judges of the Inferior Court for the said County, and Gentlemen named in the special Commission; containing the Trials of GEORGE FREDERICK BOUTELIER and JOHN BOUTELIER, for the Murder of FREDERICK EMINAUD,

ON Tuesday the 3d of May, about the hour of two in the afternoon, the Commissioners being met in the Court-house at Lunenburg, and the Commission having been read, the names of the following gentlemen of the Grand Jury were called :

E. James, Esq; *Foreman*,
James Paterson,
John Anderson,
Robert Lord,
James McDonald,
Adolf Newman,
Casper Heckman,
Thomas Pennell,
Christian Born,
Andreas Young,

Casper Gloshen,
Edward Keighly,
John Morash, sen.
Peter Morash,
John Morash, jun.
Theodore Naw,
Gotlieb Harnish,
Peter Arenberg,
Seth Bailey,
Wendell West,

and the same having been sworn, the Chief-Justice delivered the following Charge :

Gentlemen of the Grand Jury,

YOU are here assembled to discharge a duty, in its nature at all times grave and important;—upon the present occasion, the most serious and affecting, that can be well stated to the human ear. For, as it is, upon the one hand,

hand, to enquire concerning the blood of persons supposed to have come to their death by means, and in a manner, the very secrecy of which, has naturally struck terror into the minds of the country; so is it, upon the other, to put the subject upon his trial for a crime, *a due conviction* of which admits not a possibility of mercy here upon earth: since, whatever differences of opinion may have subsisted as to the punishment of other offences, the crime of *Murder*, coming home, as it does, to every man's existence, crying in every ear, and exciting but one sympathy in every breast, the practice of mankind, in conformity with the express law of God, has invariably pursued with death.

His Excellency's paternal care for the welfare of the province, would not permit him to suffer such a cry to remain longer unexamined into, than the immediate engagements of the term at Halifax obliged him to wait, for such assistance in the prosecution of it, as the Supreme Court could furnish: And he has, accordingly, lost no time, in assigning my learned Brother and self, (joining with us, for our assistance, the respectable Magistrates who sit beside us) to enquire into it, for the *satisfaction*, as well as for the *convenience* of the country, upon the spot.

For this purpose, we are invested with, and you are assembled under, a commission, empowering us, with the intervention of proper juries, to hear and determine of such crimes and offences, as may be objected against persons now in the county goal, and to deliver the same.

The first step, therefore, now, in the execution of it, will be for you, Gentlemen, with a view to enquiry, to receive information, upon oath, from such as shall be prepared to give it to you, of whatever offence or offences, exist to be objected to any, that are now in your county goal.

Though the commission has a wider scope, I need scarcely inform you, that its main object is, to enquire concerning the blood of an unfortunate family, late no more in this part of the province, supposed to have come to their death, by *Murder*.

Without entering into a nice exposition of the several definitions or descriptions of murder, as they are found
in

in th
aggr
mur
killi
that
as it
testi
odio
Fo
fon ;
lacio
of g
T
exift
if an
tion.
W
it sh
offer
have
you
king
vinc
to g
will
denc
Bill.
T
defin
that
the
wor
I bel
P
natio
port
A
opin
ing
mad
In

in the old law-books, where the wickedness of the act is aggravated by the circumstances of secrecy, or treachery, murder has been long since settled, to be the voluntary killing a person, of malice prepense; though certainly that which is either secret, or treacherous, in proportion as it becomes less easy to elude, and more difficult of detection, is, in its nature, infinitely more alarming and odious.

For this reason, of all modes the *most* detestable is poison; and the murder of persons standing in particular relations of confidence to the murderer, takes a higher cast of guilt, and is denominated *petit-treason*.

These specific aggravations do not, that I know of, exist in any case that is likely to come before you: But if any thing like them exists, these serve best for illustration.

What the particular circumstances may be, from which it shall be proposed to you to frame a charge of this offence, against any persons now in custody, as far as they have come to my knowledge, I leave to be collected by you from the witnesses, and forbear to anticipate; betaking myself rather, to what is more peculiarly the province of the Court in this stage of the proceedings, *i. e.* to give you a short direction, upon what principle you will do well to govern yourselves, as respecting the evidence that shall be laid before you, in turning it into a *Bill*.

That you come to this enquiry with no passions but a desire of public justice, nor with any worse sentiment than that of an honest indignation, at a supposed offence, of the deepest dye, I am so convinced, that I have not a word to say but in *commendation* of the motives, by which I believe you to be actuated, upon the present occasion.

Permit me only to entreat you, not to let that indignation, which, as applied to the crime, is laudable, transport you too far, against any who may be innocent of it.

At the same time, if you have ground for a probable opinion, that Murder has been committed, it is that crying offence, that will not sleep, but will have inquisition made of it in open day.

In this case, less than direct and full evidence will be
sufficient

sufficient in point of law to justify your presentment, made upon a satisfaction in your own consciences, that there is sufficient and just cause, to put the party upon a Trial. For it is the part, and at the peril of every man, to be so clear in his conduct, as not to be the object of that *suspicion* even, which *is* sufficient, in a case of blood, to put the party to answer.

With this Charge only, I dismiss you to your office ; and God direct you in your enquiries, and us in the issues of them !

The Court then adjourned to six o'clock the same evening.

Tuesday, May 3d, 1791. Six o'clock P. M.

The Court being again met, the Grand Jury returned a Bill found against George Frederick Boutilier, and John Boutelier, for the murder of Frederick Eminaud, upon which the persons so indicted (who were in custody) being sent for, and set to the bar, they were arraigned ; the indictment setting forth in substance :

THAT George Frederick Boutelier, and John Boutelier, not having the fear of God before their eyes, but being moved and seduced by the instigation of the Devil, on the 19th day of March, in the thirty-first year of the reign of our Sovereign Lord George the third, King of Great-Britain, &c. with force and arms at Lunenburg, in the County of Lunenburg, in and upon one Frederick Eminaud, in the peace of God, and our said Lord the King, then and there being, feloniously, wilfully and of their malice afore-thought did make an assault, and that they the said George Frederick Boutelier and John Boutelier, and each of them, with certain large sticks of no value, which they severally in their hands then and there held, him the said Frederick Eminaud in and upon the head, breast, back, belly, sides and other parts of the body of him the said Frederick Eminaud, then and there feloniously, wilfully and of their malice afore-thought, divers times did strike and beat, giving to him the said Frederick Eminaud then and there, by striking and beating of him with the sticks aforesaid, several mortal strokes, wounds and

and bruises in and upon the head, breast, back, belly, sides, and other parts of the body of him the said Frederick Eminaud, of which mortal strokes, wounds and bruises he then and there instantly died.—And further, That the said George Frederick Boutelier and John Boutelier did wilfully make an assault upon the said Frederick Eminaud, with a certain instrument of wood and iron commonly called a Tomahawk, which he the said George Frederick Boutelier in his right hand then and there had and held, and him the said Frederick Eminaud, in and upon the head of him the said Frederick Eminaud then and there did strike and cut, giving to him with the Tomahawk aforesaid, in and upon the head of him the said Frederick Eminaud, one mortal wound, of which mortal wound he the said Frederick Eminaud then and there instantly died; And that the said John Boutelier at the time of committing the felony and murder aforesaid, by the said George Frederick Boutelier in manner and form aforesaid, feloniously, wilfully and of his malice aforesaid, thought was present, aiding, helping, abetting, assisting, comforting, and maintaining the said George Frederick Boutelier the felony and murder aforesaid, in manner and form aforesaid to do, commit and perpetrate, &c. &c.

To this indictment they severally pleaded, 'Not Guilty;' and (upon a question put to them by the Court) having declared themselves ready to take their trial, the Court gave them notice that it would be proceeded upon the next morning at 10 o'clock; upon which they were taken back to the prison, and the Court adjourned to that time.

Wednesday, 4th of May,

The Court being opened, and the prisoners sent for, and set to the Bar, and informed of their right to challenge the jury, as they should come to the book to be sworn, and one Matthew Ernst only (who was upon the Sheriff's panel, and called) having been accordingly challenged by them, the following gentlemen were sworn:

Alexander McNeal,

Christian Tanner,

Martin Minick,

James Dorcas,

John Meisener,

Leonard Young,

B

John

John McGregor,
John Hiltz,
George Bichler,

Edward Mullock,
Joseph Bailey,
Leonard Arenberg.

The indictment having then been read over to the jury by the Clerk of the Arraignment in the ordinary way, Mr. Stewart, as Counsel for the Crown, opened the prosecution by stating, That George Frederick Boutelier and John Boutelier, stood indicted by the Grand Inquest of the County of Lunenburg, for the Murder of Frederick Eminaud on the nineteenth day of March last; that to this indictment each of the prisoners had pleaded, not guilty, and had put themselves upon God and their country for trial, totally denying the crime laid to their charge and trusting to an inference of their guilt or innocence from the proof which would be produced on the part of the prosecution and in support of their defence.—That the indictment contained two Counts, the first for striking and beating the deceased with sticks upon the head, breast, back and other parts of the body and by that means giving him mortal strokes of which he died;—the second for striking the deceased upon the head with a certain instrument of wood and iron commonly called a tomahawk, with which the prisoner George struck and killed the deceased, while the prisoner John was aiding and assisting;—That it was not necessary under either of the two Counts to prove the specific mode of killing laid in them;—That evidence of a killing with any other weapon or in any other mode would be sufficient to support the indictment.—Mr. Stewart then observed, that to him was assigned the disagreeable task of acting in behalf of the prosecution. As Counsel for the Crown, it was his duty to bring forward every circumstance of proof that could in any degree tend to sustain the charge against the prisoners;—He lamented however, that to establish guilt upon a charge of such enormity the testimony he had to produce was short of positive proof, though he had no doubt it would operate upon the minds of the jury with the influence of *strong presumptive evidence*. To the jury it belonged, as arbiters between the crown and prisoners, to weigh, with deliberate caution, such facts as would appear on both sides, and from those facts alone to draw the conclusion which was to fix the guilt or innocence of the prisoners.

prisoners. That under the oath they had taken they were to *give a true verdict according to the evidence*, and, though prosecuting for the crown, he would take the liberty of cautioning them in a case of life and death not to found their judgments upon surmises, conjectures or reports that had originated out of doors. That in stating the substance of the evidence in support of the prosecution he should confine himself strictly to such matter as he was conscious would be laid before them, and decline making further observation upon the testimony than what the duty of his office rendered indispensable. That being a stranger to the situation of the country he could not be so well acquainted with many circumstances that would turn up in evidence as the jury themselves, and on that account would be under the necessity of leaving to their consideration the chief subjects of observation and inference. That under the indictment there were two facts for their investigation; the fact of a Murder having been committed, and the fact of the prisoners at the bar having been the perpetrators of that Murder. That in deciding these two important points they were to be guided by the rules of legal evidence, of which there were two kinds, positive and presumptive. That positive proof was certainly the most satisfactory upon occasions of serious enquiry and in this case it would be particularly so; but that the secret perpetration of the crime had rendered such proof inaccessible. That their verdict must therefore be founded upon presumptive evidence alone of which there were three kinds, *light*, *probable*, and *violent*. That the first in the eye of the law was of no consideration whatever; that the second depended upon the circumstances composing it and the judgments of those to whom it was submitted, and might on many occasions amount to full proof; and that the last was of itself equivalent to positive evidence. That the major part of the facts that would appear in support of the prosecution would come under the second class, and as such claim the most pointed attention and remarks of the jury.

Mr. Stewart then proceeded to the substance of the evidence by stating, That on Saturday the 19th of March last, about four in the morning, the house of the deceased was discovered on fire;—that his neighbours having re-

ceived an alarm, were assembled upon the occasion before the house, endeavouring to extinguish the fire ; that, by the time they reached the ground, little remained but the chimney and a beam across the cellar, the floor being sunk ; that their attention was directed, as if by the finger of Providence, to something lying across that beam, which by the help of a claw-hoe, they pulled out and found to be the remains of the deceased consisting of part of the trunk, the limbs of which were entirely burnt off and the inside consumed ; that this trunk lay with its back to the beam preserving a small part of its skin ; that the remains of clothes were discovered upon it, part of a waistcoat, handkerchief, and shirt, and that upon the piece of the shirt were distinctly discerned several marks of blood ; that suspicion increasing with the dawn of day, they made further search about the fire and at length found the hat of the deceased lying within a few feet of the door, and a quantity of blood within four or five feet of the hat ; circumstances of this alarming nature could not but impress the mind with the strongest probability of violence having been committed.

Mr. Stewart remarked to the jury, that here rested the full amount of the evidence he had to produce relative to the *fact of the murder*, and he left to their judgments to range it under what degree of presumption they thought proper, according to the distinction he had laid down to them and the oath they had taken. That for his own part he had already given it its full consideration and could not hesitate in pronouncing that the presumption of a murder having been committed was in his mind *violent*. That the enormity of it struck at the boasted dignity of human nature and called forth every means of exertion to wipe off the general stain and fix it upon the inhuman individual. That it would be unnecessary to define or comment upon the crime ; the feelings peculiar to the heart of Man would answer every purpose of definition or remark.—It only remained, therefore, for him to state the evidence in support of the second point and to guide the jury by every possible legal evidence in the investigation of the most important question, Who were the perpetrators of the Murder ?—That the prisoners at the bar stood charged with the crime upon the solemn Inquest

of

of the county and were now left to shake off that heavy burden of suspicion which so serious an inquiry had laid upon them ;—That the task no doubt was a momentous one, but the facility with which it might be effected depended upon their Guilt or Innocence ;—And in justice to the prosecution he could not but add, that the Man whose ill fate had cast upon him the imputation of a crime of which he was innocent, would be unfortunate indeed if by some circumstance of proof he could not shew the fallacy of the charge. That the defence to be made by the prisoners would prove how far the present grounds of the public suspicion were tenable, and the proof which remained to be produced on the part of the Crown would manifest to what length they were warrantable. That as the evidence was purely circumstantial he should proceed to detail it with all possible method, and leave the matter of conclusion to the jury.

Mr. Stewart then stated that it would further appear in evidence that the prisoners at the Bar were brothers, natives of Lunenburg, and residents of Tatamagouche, on the eastern coast of the province; that on Monday the seventh March last they left Tatamagouche together, and after a week's journey arrived on the Sunday following at Margaret's-Bay where they remained all night; that they borrowed a flat the next day in order to proceed to Lunenburg, but, the wind blowing too fresh, they declined going; that on Tuesday morning they set out for Lunenburg, and it would be clearly proved, that in the evening of that day they arrived at the house of the deceased and there supped and remained all night; that on Wednesday morning they went to their mother's house near the town of Lunenburg, and there remained the whole of that day, the whole of the next day, and the major part of Friday, without quitting the house, without expressing any desire to visit the town, or an inclination to go beyond the threshold of the door; that on Friday about two or three o'clock in the afternoon they took their departure from their mother's with the profession that they were going to return to Tatamagouche by the way of Indian Point; that at six o'clock in the evening they were seen passing the mill at Martin's-Brook, and a little while before candle-light were discovered coasting the western shore of the

the second peninsula and seen endeavouring to cross upon the ice over to the first peninsula where the deceased resided, and here they were lost for the time. That on the morning following about four o'clock they arrived on board their brother David's schooner at Indian-Point, where they remained a short time, and from whence they set sail in their flat for Margaret's Bay in great haste.

That the evidence would further relate, that on Saturday, the day on which the fire was discovered, the tracks of two persons in moccasins were found going to and returning from the house of the deceased; that those tracks were carefully followed, and their progress, after having been traced in a very indirect, suspicious line, through an impervious wood and a very unusual course, led to the spot where the flat of the prisoners was supposed to have laid; that the witnesses who pursued the tracks would be particular in their description, and would testify to the very material point of its not being customary with the inhabitants of the county of Lunenburg to wear moccasins during any season of the year.

Mr. Stewart here remarked to the jury, that the evidence thus far in its advancement would, in his opinion, reach the definition of *probable* proof; but that he would be loath to rest it in this stage of the prosecution as a foundation for a verdict, particularly when he had other corroborative circumstances in his power.—That the prisoners had been fully examined before two magistrates at Halifax,* and that their examinations would be read as evidence on the side of the crown.—That those examinations contradicted the related proof in several interesting points;—that the prisoners alledged in them, that they were not at any time in the house of the deceased during their stay at Lunenburg; that they were at sea all the Tuesday night—when they were known to have been at Eminaud's; and that they reached their brother David's schooner, at Indian Point, between eight and nine o'clock on Friday evening, the night of the murder, when, by the testimony of their own brother David himself, it would appear that they did not come on board the schooner until two hours before day-light.

Mr.

* The Prisoners were apprehended within 30 miles of Halifax, on their way to Tatamagouche.

Mr. Stewart then observed, that this being the substance of the chief evidence that would appear for the prosecution, it would naturally lay an ample ground for inference.—That the jury, he had no doubt, would draw such conclusions as, under oath, the facts would warrant them in drawing.—That it was their peculiar province and duty to decide upon the evidence before them, let it be ever so light, and if from any inference to be drawn from the testimony they were convinced in their minds of the guilt of the prisoners, they were bound in conscience to convict them.—That the burden of presumption lay heavy upon the prisoners ; that the circumstances of proof, standing unconnected with each other, were to be sure slight, but when taken together and united, fell upon the mind with all the force of *strong probable evidence*. That from the first to the last of their conduct there appeared something to be accounted for, something inconsistent with the plain path of truth and innocence. Their remaining at their mother's three days, by their own confession, without quitting the house, carries with it a dark suspicious secrecy, from which the jury could infer nothing favourable to the prisoners : Their having been at the house of the deceased on the Tuesday evening, when contrasted with their positive contradiction of that fact, was unfurmountably suspicious : Their arrival on board their brother's schooner at Indian-Point at so late and silent an hour of the morning, after having been upwards of twelve hours in performing a journey which might have been completed in two or three, left an awful space of time to be accounted for, and gave vast room for drawing a dismal inference : That the *trials* were of *themselves* no great weight in the scale of evidence, but when viewed as component links of the same chain of proof, they appeared *providential* and striking : And that when to these circumstances were added, the clear evasions so distinguishable in the examinations, with respect to the most material facts, the jury could not but receive an impression truly dangerous to the prisoners, unless it could be effaced by testimony in support of their defence.

Mr. Stewart concluded by observing to the jury, that the crime under their consideration had met with astonishing diligence in the search of its perpetrators, and, to the credit

credit of the magistrates of the town of Lunenburg and every inhabitant within it, he could safely pronounce, that no crime of the like secret enormity was ever brought by public investigation so near the bound of detection:—That the evidence was important and numerous, and from the nature of it would require strict attention and thorough deliberation:—That he was conscious the jury would view it in that light, and, upon whatever conclusions they might find their verdict, that it would be the result of a strong conscientious conviction, consistent with the oath they had taken. If such were the impression of the evidence upon their minds that they doubted not the guilt of the prisoners, he expected of course a verdict for the crown; they were bound to give it. But, should the amount of the proof produced not lead them to that conclusion, they were equally bound to acquit; for, though counsel for the prosecution, he would be happy to remind them of an ancient maxim, well known to the humanity of the English law, that “it is better that ninety-nine guilty men should escape than one innocent man suffer.”

Mr. Stewart then proceeded to call his witnesses, who being sworn and examined,

Joseph Contoy deposed, That he knew the late Frederick Eminaund, whose house stood on the east side of the first peninsula, near Lunenburg; and that he (the witness) lived opposite to him, upon the west side of the second peninsula. Upon Saturday, the 19th March last, about four in the morning, he received an alarm from his neighbour's son, of Eminaund's house being on fire. He immediately sent to his neighbour, and they crossed together over the ice, and found almost the whole of the house burnt down to the ground, little remaining beside the chimney. They immediately sent for Frederick, the son of old Frederick, who lived at no great distance from him. It was not yet day, but by the light of the fire, looking at a beam that remained across, the floor being burnt, or sunk away, they perceived something like the remains of a dead body. Upon the beam giving way, they went up to it, and it appeared to be the remains of old Eminaund. The limbs were all burnt off, and the inside burnt out. The remaining trunk lay with its back to the beam, part of the skin remaining, burnt and shrivelled

velled up, like parchment ; where the back touched, the cloaths remained unconsumed ; and he appeared to have had on his jacket, a woollen garment below, that he wore for the rheumatism, and below that his shirt, with a handkerchief round his neck. Upon examining, they found blood upon his cloaths, between the shoulders, dried, and, as it were, burnt by the fire. This was about the middle of the room, within what had been the house. As to his wife and grand-daughter, who lived with him, there were no remains of them to be found, but here and there a bone ; being entirely consumed. As day broke, at the distance of about eleven feet from the door of the house, they found his hat lying, with the marks of one or two sparks of fire on it ; and about four or five feet from the hat, was a quantity of blood, in a thick mass, mixed with the snow, apparently about three quarts. The deceased used to go to bed about nine. He never knew him to sleep in his cloaths. He had known him as well as his own son.

Being cross-examined on the part of the prisoners by Mr. *Lombard*, who had been admitted Counsel for them, he said, That the distance of the deceased's body was about one foot from where his bed had stood ; that he had not heard him cry out ; but that in truth the night had been thick, and the sea had rolled a good deal ; and that he could at no time have heard him, even in the day, at his house. That he did not make any observation as to any mark of violence on the body ; that the blood was between the shirt and the woollen, and that remarking that, he had been satisfied murder had been committed, and looked no further ; that there was no mark of blood upon the hat, nor any sprinkled about at the outside of the house, beside the mass he had spoken of.

Nicholas Eifenhaur was then sworn, who said, he was neighbour to Contoy, the last witness. He too lived opposite Eminauid's, near Contoy. About four in the morning of the 19th of March, he observed from his window Eminauid's house on fire. He ran out, frightened as he was, without his cloaths. Having returned in again, while he dressed himself, he sent his son to alarm Contoy ; as soon as he was dressed, they crossed over together upon the ice to the house, which was still burning, and sent for young Eminauid. In the mean time, he, Contoy, and

his two sons, went together up to the house. Upon looking, they thought they saw the remains of a body upon a beam that still lay a-cross, but they could not immediately get at it. But the beam at length giving way down into the cellar, they quenched the fire, and then raked the trunk out with a *Claw hoe*, and put it upon a piece of board. It had on the remains of a shirt, a red baize garment, and a linsley-woolsey waistcoat, and upon the shirt was blood, having a baked look. Day breaking between five and six, they discovered a quantity of blood at a small distance from the outer door, about eight feet.

Upon cross-examination, he said, he had not made any remark whether the blood upon the shirt appeared to have proceeded from any wound or blow. He saw no person near the place at the time.

William Cheney, said, he lived with his mother-in-law Mrs. Boutelier, the mother of the prisoners. On Wednesday the 16th of March, they arrived at their mother's, where he then was, coming round the house, and shaking hands with him, as they turned the corner, where he was at work. They all went in together, and breakfasted. He (the witness) being that day to go to Indian Point, where David Boutelier (brother to the prisoners) was with his schooner, to help him to do something to the schooner, the prisoner George bid him tell Davie, that he would go with him in his schooner, to Margaret's-Bay. The witness accordingly went that day to Indian Point, where Davie was. He was about two hours going from the mother's, Mrs. Boutelier's. There he remained until the Friday following, when he left the schooner, and returned to Mrs. Boutelier's between five and six in the evening. Upon reaching home, he found the prisoners gone. It was by this time dark. He had come the common way, and had not met them. The prisoners upon their arrival, on the Wednesday, had told him they had come from Tatamagouche, and that, at Margaret's-Bay, they had borrowed a flat of one Mr. Minego, to come over in.

Upon cross-examination, he said, the message from the prisoners to Davie was, that *provided the wind was fair*, they would go with him. Whether it was fair or not, when Davie went he could not tell. He had understood from them they had come in a flat, and thinks it likely they

they would return to where they had left their flat, and proceed in it to where Davie's schooner lay, in which case they would pursue a different course in getting to it; from that which he had taken to return. When he left Indian Point on Friday evening, it was very foggy. The ice in the Bay was not broke, where he passed over; but thinks it might have been below, among the islands.

Susannah Cheney, wife to the last witness, and sister to the prisoners, deposed, that she lived with her mother. She remembered the prisoners having arrived at their mother's, on the Wednesday in the week that the deceased's house was burnt. They said they had come from Tatamagouche, by Margaret's-Bay, where they had borrowed a flat of Minego, in which they had come on. She did not understand where they had last come from. She understood from them, they had been at Eminaud's, where they said they had had a good supper, sweet milk, and bread, and a good bed; but did not remember that they mentioned when. As she recollected, however, it was upon the Wednesday night at supper that they mentioned this, the conversation being about their journey from Tatamagouche. They never went out of the house, but to the door, the whole time, from their arrival to their departure; remaining constantly at home all Wednesday, the whole of Thursday, and Friday until they set out upon their return. They once wanted to go and see their uncle, but their mother and she would not let them, wishing to have as much of their company as they could, and saying they would send for their uncle there. They took their departure on Friday, between two and three in the afternoon. They had in their knapsack two knives, and some meat; they had between them two pair of moccasins, and snow-shoes, with a tomahawk. She heard them say they would go to Halifax, by Margaret's-Bay, and that they were going to their flat; but did not recollect whether they said they were going to Davie's schooner.

Upon cross-examination, she remembered them to have said, that, if it should be a fair wind when Davie was going, and that he did not stop too long, they would go with him; otherwise, they should proceed in the flat.

John Peter Boutelier, brother to the prisoners, said he lived with his mother. He remembered the arrival of

his brothers, the prisoners, and their mentioning their having been at Eminaud's, and having supped there, and got good bread and milk. They never went out all the time they were at their mother's. When they took leave on the Friday, they said they were going back to Tatamagouche; that they should go on board their brother David's schooner, and, if it was fair, go with him either to Margaret's-Bay, or Halifax. The tomahawk was in the hand of John. They had maugasins, and snow-shoes, each a pair, with a pack. They left their mother's about three o'clock. He had been sent out by them, the day before their departure for some rum.

Upon cross-examination, he connected the account he had given, that each had a pair of maugasins, and snow-shoes, and said that John carried both pair, slung on the tomahawk.

Joseph Boutelier. He was at his mother's when the prisoners arrived, on the Wednesday. They said they had come from Tatamagouche. Upon their mother's asking them, in his presence, where they had lodged the night before, their answer was, at old Eminaud's.

Being cross-examined, he said, he was present when they came in, and repeated his testimony in chief as to their having lodged at Eminaud's the Tuesday night.

David Boutelier, was at Indian Point with his schooner the night the deceased's house was burnt. The prisoners (his brothers) came to him there about two hours before day upon the morning following, the Saturday, the 20th of March. Upon their arrival, being, as they said, cold, they went to sleep, and, as soon as it was broad day, went off again. He wanted them to stay, and go with him; but they said they could not, that they wanted to get back to Tatamagouche, before the snow was off the ground. He did not particularly see what they had with them, but upon his asking them if they had an axe, to cut down wood for fire, they said they had.

Upon cross-examination, he said it was within but two hours of day when they came on board, to the best of his judgment. He had not asked them where they came from, nor did he recollect their having told him. They slept until broad day, having talked together a good while, before they went to sleep. They would have gone
with

with him, if the wind had been fair ; but it was not, and they could not wait. The ice in the Bay was at this time broken in cakes, floating about. The Friday night had been foggy. When they came on board they said the reason of their being so late, was, that they had been lost in the fog and ice, of which there was a deal drifting about. That when they thought to have rowed in a clear place, they were obstructed by the ice.

George Michael Smith, said, he had been at the deceased's upon the Wednesday preceding the burning of his house : That he, the deceased, mentioned the Bouteliers, from Tatamagouche, having been at his house the preceding night ; and having arrived through the woods ; and that they had staid with him that night. He said he was sorry he could not ask him to drink, having drank all the rum he had in the house with these Bouteliers. He mentioned his being to receive £.50, upon the following day, the Thursday.

Upon his cross-examination, he said the deceased had not, in talking of them, specified Christian names, describing them only as the Bouteliers from Tatamagouche.

George Bohner deposed, that, upon Saturday the 19th of March, after the house was burnt, having been informed of a track that had been observed, he went to trace it. Upon going there, he perceived the track of steps coming right up to the deceased's house. Upon tracing them back, he traced them to Catliber's, and from thence to the ice, where they were lost, till they crossed the ice, when he took them up again, and traced them to the back of Peter Wambole's land, where he met another track returning from the house ; the former being that of persons going to it. From this he traced a double track of steps going, and returning, till he came to the next ice, where he lost them again. From this he pursued his course round Calbach's mill, to Casper Young's, without finding any, till he came to the back of Ocker's land, upon the opposite shore, where he fell in with them again upon the beach, and traced them to a place, from whence a flat had been evidently launched into the bay. The track was of maugafins, two pair, one pair larger than the other.* Both the tracks, going and returning, had been

* The two Prisoners were of different sizes, one considerably taller than the other.

been made with the same maugafins, and they had been recently made, for the snow was dissolving at the time. No part of these tracks lay through the common road, but through woods and unfrequented paths. He said maugafins were not in use in that part of the county.

Upon cross-examination, he admitted there might be two or three persons who had them in the county; that he had seen people about Chester with them, who sometimes came that way, by Calbach's mill; that he had seen his own brother in town that winter with a pair—and that, he had noticed in particular, one *Befançon* with maugafins at the place of the fire, that very Saturday morning.

Casper Hickman, an accidental witness, who happened to be in court, was sworn to give an account of *Befançon*. He said he lived in Lunenburg: That *Befançon* had slept at his house, the night the deceased's house was burnt. That he had come to him some time after dark; and had remained with him, till the news came, the next day, of *Eminaud's* house being burnt.

Andreas Young. He traced the tracks with *George Bohner*, and knew of nobody in the county wearing maugafins.

Peter Longille deposed, that he lived upon the North-west Range: That upon the evening of the Friday, upon the night of which the house was burnt, being with one *George Titoff* at *Martin's Brook* mill, about 6 o'clock, *G. Titoff* remarking two men passing by, took notice of them, and asked him who they were. He immediately knew them to be the two *Bouteliers* from *Margaret's Bay*, and said so. John had two pair of snow-shoes on his right shoulder, hung upon a tomahawk. *George Frederick* had a bundle, that looked to him like a loaf of bread. They took the ice just below the mill, and proceeded strait forward, till he lost sight of them.

Upon cross-examination, he said the road they took upon the ice was a common road, that had been used all the winter, to go to *Calbach's* mill, but that it would lead equally there, or along the shore.

George Titoff confirmed the account given by the last witness.

John Baukman, said he lived on the second peninsula, about half a mile from *Calbach's* mill. Being at home the

the night the deceased's house was burnt, he observed two men upon the ice, between his house and *Rottenbausen's*, on the opposite side the bay, where the deceased's house was, trying the ice with their axe, if it would bear them over. The ice not being strong enough, they went back towards Calbach's mill. This was betwixt six and seven in the evening. One of them was taller than the other. The taller one had the axe, trying the ice.*

Being cross-examined, he said he did not know the men at the time. He was in doors, looking through a window.

John Lay said, he likewise lived on the second peninsula, near to Baukman, the last witness; and was at home upon the evening when Eminaude's house was burnt. Being at his window, he observed two men passing upon the ice, from east to west, towards Calbach's mill. At first he thought they might be Baukman's two boys: but then recollecting how bad the ice was, he concluded they must be strangers, or they never would think of going upon it in its then state. Upon this, he went out to see who they were. One of them appeared to have a bundle, who, upon seeing him, drew off shore.

Upon cross-examination, he said he did not know whence they came, nor where they were going.

This was the whole of the *viva voce* evidence.

The examinations of the prisoners were then produced, taken at Halifax before John Newton and William Taylor, Esquires, Justices of the Peace, being first duly proved by Mr. Wood.

First, the examination of *George Frederick Boutelier* stated, "That the Examinant went from Tatamagouche with his brother John Boutelier to Margaret's-Bay, where they arrived on Tuesday the 15th of March, which they crossed in a flat they borrowed of one John Minego and landed the next morning at Martin's-Brook about sunrise, and immediately proceeded from thence to their mother's, where they stayed that whole day and night, and the whole of the next day and night, without going out of the house, during which time they saw their uncle who called to see them—That they left their mother's house about Twelve o'clock

* This description corresponded with the prisoner, *John*, who was the taller of the two, and mentioned by all the witnesses to have carried the tomahawk.

o'clock at noon, and returned to Martin's-Brook, where they found their flat and proceeded in it to Indian Point, and there went on board of a schooner owned by their brother David—That this was about 8 o'clock in the evening—That they remained from that hour until the next morning on board of their brother's schooner—That they left the schooner in the flat a little after day-break and proceeded for Margaret's-Bay, and crossed it about sun-down, leaving their flat with Minego, from whom they borrowed it—That they slept that night at their brother-in-law John Daufiné's, and passed the whole of the next day and night with their brother John Boutelier at Margaret's-Bay—That on Monday they arrived at Halifax about 3 o'clock in the afternoon where they remained until Wednesday morning, and then set out for Tatamagouche—That he knew the deceased Frederick Eminaud, and was in his house about three years ago—That he was not at Eminaud's house while at Lunenburg this last time, and that he was in no other person's house except his mother's—That the first he heard of Eminaud's house being burnt was in Halifax.

The said George Frederick Boutelier, on his further examination, said, "That his brother and himself wore nothing but moccasins on their feet from Tatamagouche to the present time."

The examination of *John Boutelier* stated, "That the Examinant set out from Tatamagouche in company with his brother, George Frederick Boutelier, on Monday the 7th of March, and arrived at Margaret's Bay on Sunday the 13th. On their way from Tatamagouche to Margaret's Bay, the first night they slept in the woods: the second night they slept at Mr. Mauger's, in Cobiquid: the third night they slept at the house of Mr. Fletcher's son-in-law, on the Shubenacadie river: the fourth night they slept at Mr. Hall's, about eight miles distance from Mr. Fletcher's: the fifth night they lodged at a house on the road from Sackville to Halifax, from which house they set out for Margaret's Bay, and, in their way, stopped at the Dutch Village, and called in at the house of one Calbeck, from thence proceeded to Calbeck's son-in-law's, at whose house they slept that night: on Sunday morning they proceeded to Margaret's Bay, and arrived

at

at the house of Mr. John Daufiné in the afternoon, where they remained that night. On Monday morning they borrowed a flat from John Minego in order to proceed to Lunenburg, but the wind blowing too fresh they put back and went to the house of their uncle James Boutelier, where they remained that night. On Tuesday morning they set out again in the same flat for Lunenburg; and being out all night in the open boat, they did not arrive at Lunenburg until Wednesday morning about sun-rise, and landed at Martin's-Brook, where they hauled up their flat above high-water mark, and went to their mother's about three miles distant. The business that the Examinant and his brother came on was to see their mother and to purchase things for some people at Tatamagouche; he brought with him four letters, one for the Hon. Henry Newton, two for Mr. M'Nab, of Halifax, and one for his uncle John Milliar at Margaret's-Bay. That they remained at their mother's house all Wednesday, Thursday and Friday, until 5 o'clock; from whence they went to their boat at Martin's-Brook, and went on board their brother David Boutelier's vessel lying at Indian Point, at about 8 or 9 o'clock the same evening, where they remained that night. The next morning they left their brother's schooner and proceeded in their flat to Margaret's-Bay, at which place they arrived the same day. In their way they stopped on board their brother John Boutelier's schooner lying in South-west harbour. Upon their arrival at Margaret's-Bay they delivered the flat to John Minego, and went to the house of John Daufiné, where they remained all night. The next day they went to their brother John's house, and remained there that day and night. The next day they came to Halifax, being Monday the 21st of March, about 3 o'clock, and put up at Laycock's tavern, and remained there that night. On Tuesday they bought several articles in town, and returned to Mrs. Laycock's, where they remained that night. On Wednesday morning about 8 o'clock they set out for Tatamagouche. That he knew the deceased Frederick Eminaud, and was at his house about four years ago. That during the whole time he was at Lunenburg he did not go into any other house but his mother's. That when he went on board his brother's schooner at Indian

Point he carried a bottle of rum from his mother's house, which bottle he left on board, and desired his brother David to return it to his mother."

Here the evidence on the part of the prosecution closed.

The prisoners being severally called upon for their defence, alledged merely, that they were not guilty, and called no witnesses ; upon which the Chief Justice immediately summed up, as follows :

Gentlemen of the Jury,

George Frederick Boutelier and John Boutelier stand indicted for the Murder of Frederick Eminaud ;—in other words, for the wilfully killing him, of *malice prepensed*, or *aforethought* : that is, not by accident—not in their own defence—not under the influence of such provocation as the law admits to be some palliation of the crime of wilfully taking life from a fellow-creature—but in pursuance of a wicked design, preconcerted, and predetermined upon, for a wicked purpose ; which the law describes by the term *malice*.

This is the general nature of the charge, contained in an indictment, consisting of (as they are called) two *counts*, or parts.

In the *first*, they are both charged alike with having done this, by means of blows given the deceased upon his head, and other parts of his body, with *sticks* ; whereof he instantly died. In the *latter*, *John* is supposed to have given the fatal blow, with a *tomahawk*, George aiding and abetting him at the time ; which would make him equally guilty.

Such is the way in which the offence imputed to them is laid in the indictment, in order, one way or the other, to meet the idea you may collect of the fact from the evidence : But it does not at all signify, in point of law, upon this indictment, with what specific weapon or instrument the deceased was murdered, if you are satisfied he came to his death by the kind of violence specified : For, though you should not have reason to think it was by a stick or a tomahawk, yet, if you shall be satisfied from the circumstances, that he came to his end, by that kind of death, which these are calculated to procure, that will be sufficient, as far as concerns the instrument. So,
thought

though the probability, and your opinion should be, that, blows not having been struck by both, George struck them, and not John, and that it was John that was aiding and abetting, instead of George, as laid in the indictment, neither will that signify ; you may still find them both guilty, whether you think that each gave his blow, or only one, (whichever that one was) provided you are satisfied that a blow, or cut was given by one of them, the other aiding and abetting at the time ; and that the deceased died of the same.

In support of this indictment, a number of witnesses have been called ; and what you will have to consider, will be, whether you are satisfied, from the circumstances that have been given in evidence, that the deceased was murdered by the prisoners at the bar, in either of the ways laid in the indictment, explained to you as it has been : For, after all, be the consequences what they may, it is upon *evidence*, and the evidence alone as given in court, (not upon surmises, or suspicions formed out of doors), that the fate of men's lives, in courts of justice, must ultimately depend.

At the same time, before I proceed to sum up to you, what that evidence has been, I think it befitting to state to you certain points, respecting the nature of evidence in general, as applicable to the particular case here.

Undoubtedly, the desirable thing is, in every case, civil as well as criminal, to have direct, demonstrative evidence of the fact to be proved ; but particularly in criminal cases, and more especially still where they touch life.

But wickedness often devises such secret times and ways to perpetrate its evil designs, that if nothing but positive evidence could be received for a jury to go upon, in determining facts, crimes would forever go unpunished, and the condition of society be rendered most insecure.

Presumptive evidence, therefore, has been let in ; and that which is positive not being to be had, circumstances are resorted to : For, when the fact itself cannot be demonstratively evinced, that which comes the nearest to a proof of the fact, is a proof of such circumstances as either necessarily, or usually attend such facts : And, in proportion as these turn out, in number and application, the strength of the presumption arising from them becomes more or less forcible, and persuasive. If

If the presumption arising from such evidence be but light, it is as none at all, and ought not to weigh in your minds in the least, but to be dismissed entirely from them, as that upon which no reliance ought to be had.

On the other hand, the presumption arising from circumstances merely, may be so strong, as to be irresistible, and, if possible, even more conclusive than a simple testimony of the fact itself, which is the nature of direct evidence. Thus, to put a familiar instance, that has relation to the present case, suppose a man having been stabbed in a house, another is seen running immediately out with a bloody knife in his hand, and no one else in the house at the time,—here positive proof is wanting, for the person is not seen to have done the fact; but a presumption arises so violent from these circumstances against him, as hardly to admit of proof to the contrary, allowing the circumstances to be true.

So, though the presumption be not so violent, if it be probable only, provided that probability be strong, and no way explained, nor any answer given it, (much more if one be given, which you must be convinced is untrue), this likewise will be a ground upon which you may legally exercise your discretion, and form a verdict of guilt.

Enjoining you, therefore, to divest your minds of every thing like a preconceived opinion, and having thus opened to you the nature of the charge against the prisoners, and the indictment, with as much of the law of evidence as is immediately applicable to the case in hand, give me leave now to proceed to sum up to you what that evidence has been, as I have taken it down, while the witnesses were giving it.

(Here the Chief Justice went through the whole of the evidence as stated above, observing upon particular parts of it, as he went on, and then proceeded thus :)

The prisoners having said nothing in their defence, nor called any witnesses, this, Gentlemen, is the whole of what you are to deliberate upon, and upon which their lives are, in your hands, to depend. And certain it is, that there is here no *positive proof* of their having been at the house about the time the deceased, with his family, are supposed to have been destroyed; nor any of an actual Murder having been committed. But their guilt rests upon

upon the supposition of their having been there, under circumstances, which I will state to you by and by, and upon the state in which the remains of the deceased were found, together with the appearances about the outside of where the house had stood, the next day after it was burnt. And, no doubt, but that, if a person is found at a place where a murder has been committed, near about and before the time of it, a suspicion (subject always either to be explained or corroborated by circumstances) more or less strong will fall upon such person, provided it be first clear, that a murder was committed.

Therefore, you will consider, first, whether you are satisfied, upon the evidence that has been given, that here has been Murder. For if you have the least doubt upon your minds, notwithstanding appearances, that this unfortunate family, particularly old Eminaud, may have come to their death not by violence; but that he and they have accidentally been burnt to death:—If you are not perfectly satisfied of the contrary, and that it was in the way the indictment has alledged it, then, there is an end of this prosecution, which founds itself upon that supposed fact. You will therefore be perfectly satisfied, that he has died no natural, no accidental death, but a violent one, before you proceed to your subsequent enquiry, to whom he has been indebted for it. But, in deliberating upon this point, as to the fact of a Murder, you will consider whether such pregnant marks are not found here, as can leave no doubt upon any reasonable mind, as to this previous question. For, you see, in the first place, his body, though found at no great distance from his bed, is found in its cloaths, and you are told by a witness, who could not but know, that it was not his practice to go to bed with his cloaths on, so as to preclude the idea at least of his having been burnt in his bed. Then, blood is found upon those cloaths: and though, upon the cross-examination of old Contoy, no mark of violence is sworn to upon the body, yet consider the state in which it was found, and by whom. Contoy was no surgeon to examine it particularly, and he tells you he was satisfied in his own mind, the moment he saw it, with the cloaths on, and the blood, that there had been foul play; and so looked no further. But if he had, consider what probability there was, of any mark
being

being visible, in the state to which the body was reduced. What was it?—the limbs all burnt off—the inside burnt out—what remained, little more than a mere bony trunk, with a sort of shrivelled parchment, (that had been skin) upon some parts of it. How possible, how probable for any mark of violence to be no longer discernible but by a critical eye, if at all. Then consider the circumstance of his hat, found at some distance from the house, and still further from the body; and at some little distance from the hat, a quantity of blood, (the witness, miscomputing it probably, called it towards three quarts; but) a certain quantity, whether these things do not speak for themselves; and how they are to be accounted for in any reasonable manner, but by supposing Murder.

You will, therefore, take these circumstances into your consideration. If they do not entirely satisfy you, if they leave any the least doubt upon your minds, you will desist from all further enquiry, finding the prisoners not guilty. If you are satisfied from them that Eminaund was murdered, you will then consider, upon the evidence, whether you believe the prisoners were at his house, the night upon, or immediately subsequent to which the Murder was committed. And in forming your opinion of this, you will consider, first, the profession with which they left their mother's upon the Friday between two and three, that they were going to Indian Point, (which is at the distance from thence of about two hours walk) to their brother Davie, to proceed with him to Margaret's Bay: You will then consider how they were seen, so late as six in the evening by *Longville* who knew them, and by *Titoff*, from Martin's-Brook Mill; then subsequent to this by *Baukman*, (who plainly describes them) trying the ice with their tomahawk, opposite to Eminaund's side of the Bay, to get over; then higher up by *John Lay*, (who likewise describes them) still trying in vain to get over, and finally traversing along the shore, round by Calbach's-Mill. You will, in the last place, consider the circumstance of a fresh track traced to the house, and back from it, to where a flat had been launched, with that of their having come and gone away in a flat: the track recently made by two pair of moccasins of different sizes, a species of wear but little known in the county, with the circumstance

circumstance of their having had maugafins, through ways not commonly used, and the prisoners themselves, as far as seen, skulking, as if afraid to be noticed.

Putting all these circumstances together, if you think they were the persons that had been there, the remaining consideration will be, whether they were the Murderers; and this will rest, upon the suspicion arising from the fact of their having been there at so critical a time, provided you are of that opinion, with the manner of their going—infinately strengthened, first, by their having denied upon their examinations, that they ever had been at Eminaud's house at all, during their late visit at Lunenburg, whereas the affirmative has been positively sworn to this day by numerous witnesses, all of their own family, deposing from declarations made by the prisoners themselves, the morning of their arrival at their mother's house: Secondly, by their pretence that they reached their brother Davie's schooner so early as nine on the Friday evening; whereas it has been impossible for Davy himself, (their own brother) speaking upon his oath, to tell you otherwise, than that they did not reach it, until about two hours before day, upon the next morning; alledging, when they arrived, as a reason for their lateness, that they had missed their way in the Fog, and had been obstructed by the ice.

It may be said, indeed, (and I leave it to your consideration) that it is not necessarily conclusive against a person charged with a crime, that he has endeavoured to clear himself from it, by an account, that turns out to be false—for, that, pinched, and pressed by some untoward circumstance, that he cannot otherwise get rid off, he may, being innocent all the while, endeavour to shift it by prevarication, not trusting to his innocence: But this is not the course of innocence, which commonly trusts to itself, and a contrary course is always suspicious; but I leave the observation to be considered by you.

You will therefore, Gentlemen, consider, upon the whole of the case, whether you are, or are not of opinion, that the prisoners at the bar murdered Frederick Eminaud, the deceased.

If you have the smallest doubt, whether it regard the fact of the Murder, the fact of the prisoners having been

at the house, or the design and end with which they might have been there, it is my duty to tell you, and your's to mind what I say, that you *ought to acquit them*; upon the humane principle, mentioned by the learned Council for the prosecution, and *candidly* mentioned by him, *That it is better any number of guilty persons escape punishment, than that one innocent Man suffer.*

If you have no doubt, but think that the finger of Providence has as plainly pointed the prisoners out, doing this deed, as if one had come and told you he saw them do it, in that case, and in that case only, you will find them guilty.

With one single exhortation more, I leave the matter to you. Take the whole into your serious consideration, *but be not hasty in forming a judgment of guilt*; remembering, that no delay, or deliberation can be too great, where life depends. Therefore, weigh every circumstance; and in giving each its due weight, give it no more; but do equal justice, leaning to mercy; and draw such a conclusion from the whole, as is proper for you to draw, judging upon your oaths.

The jury withdrew; and after having been out about an hour and a half, returned into Court with their verdict, That George Frederick Boutelier. and John Boutelier, were both *Guilty*.

The Chief Justice then said,

“Mr. Sheriff, Let the prisoners be carried back, and taken care of, for their lives are forfeited; and let them be brought up again to-morrow morning at ten to receive their sentence.”

The Court then adjourned to the next day at ten.

Thursday 5th of May.

The Court being met, the prisoners were sent for; and being set to the bar, they were severally asked, what they had to say, why Sentence of Death should not be passed upon them according to law; and neither of them offering any thing in arrest of judgment, the Chief Justice (proclamation having been first duly made for silence, while Judgment of Death was passing upon the prisoners) addressed them as follows:

George

G
have
the
imp
ness
sion,
upon
unde
their
In
drea
nour
dily
tire
dom
T
with
whic
as w
rema
havin
naud
ceed
purp
time
may,
your
by se
peace
there
your
which
has h
have
Th
your
was u
it has
you p
receiv
wanti
nor t

George Frederick Boutelier, and *John Boutelier*: You have been indicted by a Grand Jury of the county, for the Murder of *Frederick Eminaud*; and, after a long, and impartial trial, upon the testimony of a multitude of witnesses uncontradicted, all concurring to the same conclusion, by a chain of circumstances, that has left no doubt upon the minds of your Jury, that Jury, upon which, under God, you put yourselves for your trial, have, by their verdict, found you both *Guilty*.

In stating a verdict, that is to be the foundation of the dreadful Sentence which it remains for the Law to pronounce, and of which the execution must surely and speedily follow, it is fit I should publicly declare the entire concurrence of the Bench, in its justice and wisdom.

That you came into the country with the express, and with no other intent, than to perpetrate the horrid act, of which you have been convicted, there is reason to believe, as well from the manner in which you lurked, while you remained in it, as from the circumstance of your having gone out of your way, to stop at old Eminaud's house, on the Tuesday evening, instead of proceeding straight to your mother's; and that it was your purpose to have perpetrated it that very night, had the time been ripe, is highly probable: But, be this as it may, that you did, upon the Friday following, (choosing your particular day for reasons best known to yourselves) by secret and untrod paths, find your way back to this peaceful and defenceless habitation, and did then and there destroy this helpless Family, that had, according to your own declarations, received you with a kindness, which they could not afford to all, no person living, that has heard your trial, and the verdict, can be supposed to have any remaining doubt.

That your inducement to this deed, was, to possess yourselves of that money, of which this most unhappy man was unfortunately but too apt to be talking, beyond (as it has turned out) what prudence could justify, and which you probably knew he was about that time likely to have received, in a considerable sum, this likewise there is not wanting reason to believe. For this, neither grey hairs, nor tender youth, nor sex was spared. For this, the

remembrance of hospitality was done away—the cries and entreaties that must be taken to have been opposed to your cruelty were stifled, and disregarded by you ; and a whole family (doubtless) first bathed in blood, before they were, with the house that covered them, reduced to ashes.

This happened in the dismal hour of the night, when nothing but wolves and beasts of prey are supposed to be upon the stir. It happened in a peaceful, and virtuous settlement, which having ever been incapable of crimes, has ever been unconscious of alarm, and unprovided against danger. It happened to a family, which, by its innocence and exemplary labours, had rendered itself at once useful and dear to the community ; and which, considering its hospitable entertainment of you, should, of all others, have been the last objects of such a deed at your hands : which was made the more dreadful, in that it was managed by you in a way, that admitted little hope of the perpetrators of it being found out.

No wonder if an alarm should have been taken, and deep terror struck in the minds of this whole settlement.

But, as if Murder, (of all crimes) was never to go undetected, and unavenged even in this life—with all your secrecy, with all your choice of time, and contrivance of means, by an accidental word that led to the suspecting you, and by a coincidence of circumstances that would have justified your conviction, even if it had not been, as it was, corroborated by the false account you had given of yourselves upon your examination,—you, whose very arrival, and that you had been in this part of the country was scarcely known, (so closely had you kept yourselves for the execution of your dark designs)—the finger of Providence has so pointed you out, that a'l who see you, see now, to their perfect conviction, the hand that destroyed the wretched *Eminaud*, and his unfortunate wife, and grandchild ; though they see not perhaps the immediate means, by which that destruction was effected.

As the punishment which you must suffer for this will be a dreadful example to all who shall witness it, of the consequences of such an act, so I trust that your conviction will be a lesson, how impossible it is, according to all experience, for *Murder*, sooner or later, how secretly soever perpetrated, to go undiscovered.

With

With this view, I have dwelt upon that conviction ; as I have opened to yourselves the nature of the crime it fixes upon you, not in order to aggravate or afflict, but to awaken your minds to a due attention to, and consideration of the unhappy situation, into which you have brought yourselves.

For the crime itself, it is incapable of aggravation ; and therefore unnecessary for, as it is painful to me, to dwell longer upon a subject so black and dreadful.

It is with much more satisfaction that I can remind you, that, though from the present Tribunal, before which you now stand, you can receive nothing but strict and equal justice, you are soon to appear before an Almighty Judge, whose unfathomable wisdom is able, by means incomprehensible to our narrow capacities, to reconcile Justice with Mercy : But I trust you are not so ignorant as not to know, that such Beneficence is only to be obtained by deep Contrition,—soud, unfeigned, and substantial Repentance.

To bring your minds to this desirable state, you will be indulged, during the very short remainder of your lives, in the conversation of a Holy Clergyman ; who will tell you with better effect than I can, how indispensable a mark of repentance it will be in the eyes of Heaven, that you make a full and genuine confession of all your crimes.

But this is, as between yourselves, and your own consciences, under his salutary exhortations.

Therefore, only recommending it to you, with his assistance, to lose no time in making that peace for yourselves with Heaven, which this world can no longer allow you, what alone remains for me is, to pronounce that Sentence which the law has appointed for crimes like your's ;—a Sentence full of horror !—but such as Religion itself has directed, and Mankind have in all times given and executed in the like case ; to be a terror to evil-doers, and a security to them that do well.

That Sentence is, and this Court doth award,

That you George Frederick Boutelier, and you John Boutelier, and each of you, be conveyed back to the place from whence you came, and from thence to the place where stood the House of the late Frederick Eminaud, or as near to it as conveniently may be : and when you come there, you must

sack of you be hanged by the Neck, 'till you are dead; for the speedy execution of which I bid you prepare: and may that God, "who hateth nothing that he hath made," and doth forgive the sins of all them that are penitent," of his infinite goodness have Mercy upon your Souls!

The prisoners were then taken back, and the Court being adjourned, a Warrant was the next day delivered to the Sheriff, appointing their Execution to be on Monday the 9th of May, between the hours of nine in the morning and one in the afternoon; at which time they were accordingly executed.

CONCLUSION.

THE candour, deliberation and solemnity of the foregoing Trial, joined with the character and situation of the Jury, who were all of them well known to be conscientious, unprejudiced men, possessed of freehold property, and of course standing in the most disinterested view, are circumstances which, independent of all subsequent matter, ought of themselves to have removed all reluctance and scruple with respect to the awful end of so serious an enquiry. But, such is the restless turn of the human mind, that even the sacred basis of a verdict would not, perhaps, in this instance have escaped the indelicate attack of reflection and observation. The doubts, however, of the most scrupulous conscience are now effectually quieted, and a full confession of the horrid deed, at the place of execution, must afford that satisfaction to the province at large, and particularly to those more immediately interested in the happy event, which every heart capable of receiving the feeling must naturally experience.

There are many incidents, singularly providential, which served to corroborate the general suspicion of the commission of this crime, but could not have operated as evidence. The conduct of the unhappy wretches from the

moment of their apprehension till the day after their sentence, though under cover of the most hardened countenance and a constant denial of their guilt, could not sustain the simple character of innocence. Upon their arrival at Halifax from Lunenburg, on their return to Tatamagouche, they remained two days in town, expended their money at different shops, and never left the house but under the cloud of night. Early on Wednesday, the 23d of March, they were preparing to quit the town, when one of them was arrested for a debt, which he immediately discharged with the trepidation of guilt, and they instantly proceeded on their journey. Meanwhile, intelligence having arrived from Lunenburg of their being suspected of the murder of Eminaud and his family, the Sheriff of Halifax immediately made hue and cry and dispatched the Under Sheriff, with a strong guard of constables and others, in pursuit of them, by whose extraordinary diligence and care they were taken, about one o'clock the next morning, asleep, in an uninhabited house on the road leading to the Shubenaccadie river. Upon their arrest they discovered little or no surprise, and, when examined in Halifax at the magistrate's office, expressed not the least degree of astonishment at having so abominable a crime laid to their charge.

Circumstances of this nature certainly justify suspicion, but it is not upon suspicion that questions of fact, particularly those respecting life and death, are to be determined. A trifling incident led to the whole collection of proof that appeared on the trial.—An inhabitant of Lunenburg recollecting that he had met a younger brother of the Bouteliers coming into town from his mother's upon an errand, as the boy informed him, for his brothers John and George, who had arrived from Tatamagouche, created a surprise that they had never been seen abroad, from which surprise the first idea arose.

A variety of other matter relative to the affair, partly real and partly fabulous, might be introduced as well worthy of recital and remark, but the compass of this publication is too confined to admit it. The behaviour of the penitent, though guilty, sufferers at the place of execution, together with the chief authentic circumstances relative to their confession, will appear in a letter from

from the Reverend Missionary at Lunenburg to the Chief Justice, the substance of which, for the satisfaction of the public, is, with permission, here introduced.

This Reverend Gentleman, who had been sent for by the Prisoners themselves on the Thursday morning, shortly after they had received their sentence, to visit them on the awful occasion, states, "That they at first persisted in denying the deed with as much if not more firmness than ever; that they denied their having been at the house of old Eminaud and having seen him; that they complained that all that had been asserted and sworn against them was false; they acknowledged they had been men of loose lives, but that it was hard to suffer for a crime they had never committed; they complained much of the injury their family must sustain, and lamented not so much the loss of life as the hardship of their sentence.

"That at six o'clock the next morning he again attended them; that they seemed very resigned to their fate, and were not wanting in artful means to impress his mind with their innocence against his own conviction; for more than two hours they asserted with firmness they had not perpetrated the Murder. That he had recourse to prayer, and that at last after long exhortation the stony heart became mollified, and in a flood of tears *they owned themselves Guilty.*

"That they told him they had determined to do it for some months before; that they came on purpose to do it *the Tuesday night*, and intended to have it off directly back; that upon his putting the question to them, Why they did not do it *then*? they gave no other reason but that they believed God prevented them; that they did not, however, lose sight of their intention, but *kept close as their mother's* in the same determination until the Friday night on which they did it.

"That the elder brother John was the first who proposed it to George the younger, and George said he as readily agreed to it; that when they first came they carried the flat as far up Martin's-Brook as the ice would permit where they then hauled it up; the nearest house to the spot was Casper Young's. On the evening when they were observed by Longille they were then going to transport the boat to the back of Baukman's land where they were traced

traced to, and there they embarked for Indian Point; they owned they were the persons seen trying the ice.

"That soon afterwards they went to Eminaud's house, pretending to wish to sleep there, and while the old Man was going to the barn for a bundle of straw to make them a bed, they followed him out, and upon his return they killed him with sticks found by them at his own door; that he made but little resistance, and that both of them gave him repeated blows; they did not *think* that any *blood* was spilt; that they then left him, re-entered the house and murdered the old woman and grand-daughter in the same manner; that, as near as they could guess, it happened about the hour of nine o'clock; that they broke open the chest expecting to find more money than they did; that the amount was under ten pounds; that they burnt all his papers; that they were not in liquor, neither was the old man; that they had not any conversation with him about money at any time; that the time they remained in the house after the fact was little more than half an hour; that before they departed they dragged in the body of the old man, piled the three bodies one upon the other, covered them with the straw, their intended bed, and set fire to the house, but did not know it was burnt until they heard of it at Halifax.

"That the * shirt, the piece of red chalk, together with other things found in their packs they owned to be the property of the deceased; that it was true they were entangled in the ice, insomuch that they doubted reaching David's schooner, and were apprehensive they would be taken on the water; that the blood on the † blanket they believed was not Eminaud's they having had some wild meat in it; that no person was concerned with them or ever privy to their intentions."

The Reverend Gentlemen further states, "That he requested them to tell him how they could persist so long in asserting that they were innocent; the reason they gave him was, that, they were advised while in gaol at Halifax to hold out to the last, and that if no one was present to see

* These articles were shewn to the friends of the deceased, and would have been given in evidence, had not the proof of their identity arrived too late; they were, however, recognized and would have been sworn to.

† A blanket which they borrowed of Minego at Margaret's-Bay, and returned spotted with blood. Minego's testimony could not be procured at the trial.

see them do it, no murder could be proved, and they would not be hanged. Upon which, is sensibly remarked the impropriety of admitting persons indiscriminately to converse with prisoners without a proper person present.

"That the reason the prisoners gave for objecting to one Ernst being on the Jury was, that, also while in Halifax gaol, they had been repeatedly told he had positively sworn to a piece of calico, found upon them, having been bought at Lunenburg; that their minds might not be impressed with foul play against them, and for their own satisfaction, Mr. Ernst was sent for and seen by them, and it was fully explained to them, to their own conviction, that Mr. Ernst had said no such thing.

"That the condemned sermon was preached on the Sunday at church to a crowded congregation; that application was made for the prisoners to be brought to the church, but they were unable to attend.

"That there was much solemnity attending the Execution; that they confessed their guilt at the fatal place; that the people were exhorted as directed by them; that they acknowledged the justness of their sentence; confessed they had no wish to live; appeared truly penitent, George particularly so; and that the behaviour of both of them was such, that, had they not been Murderers, they might have been called Christian Heroes."—This is the substance of his very interesting letter.

One obvious and comforting remark may now conclude the whole detail.—The origin of the suspicion, the apprehension of the Murderers, their inexplicable conduct, the concurrence of contingent circumstances corroborating the first suspicion, the new openings of evidence, the concatenation of proof amounting to legal conviction, the rapidity of justice, and the particular display of a superintending Providence, give to the honest man confidence and security in his habitation, wherever situated and however defenceless, and flash on the minds of the guilty "That there is nothing hid which shall not be manifested, neither any thing kept secret but that it shall come abroad: For a bird of the air shall carry the voice, and that which hath wings shall tell the matter."

they
mark-
ately
esent.
ing to
Hali-
rively
been
ot be
r own
n, and
ction,

on the
at ap-
to the

Exe-
place ;
; that
onfess-
nitent,
both of
s, they
This is

v con-
picion,
licable
stances
of evi-
o legal
rticular
e honest
herever
e minds
h shall
et but
ir shall
tell the

